



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
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**APPLICATION FOR CERTIFICATION  
FOR THE *CARRIZO ENERGY SOLAR FARM*  
BY CARRIZO ENERGY, LLC**

**DOCKET No. 07-AFC-8**

**ORDER DENYING APPLICANT'S  
MOTION FOR PROTECTIVE ORDER**

**I. Background**

On April 16, 2009, Applicant filed a Motion for a Protective Order requesting the Committee to keep the Corridor Location Results of Staff's Wildlife Corridor Study confidential.

Staff has contracted with South Coast Wildlands to model the potential effects of the Carrizo Energy Solar Farm Project (Carrizo) on wildlife habitat (for tule elk, pronghorn antelope, and San Joaquin kit fox) in San Luis Obispo County. This exercise will assess Carrizo's biological impacts in conjunction with the two photovoltaic projects proposed by Topaz Solar Farms (Topaz) and SunPower Corporation (SunPower) in the same vicinity. The Wildlands Study will identify mitigation options for the three facilities, including "high value" property parcels along the preferred mitigation corridor.

Applicant seeks a Protective Order to prevent "designated entities," which would have access to the information, from publicly disclosing the high value mitigation properties. According to Applicant, public disclosure would motivate property owners to increase potential sale prices to a point where purchase would be infeasible and mitigation could not be accomplished. This, in turn, would defeat the public interest in the development of renewable energy resources such as Carrizo. Applicant's "designated entities" include Staff, South Coast Wildlands, Topaz, Sunflower, the California Department of Fish & Game (CDFG), and the U.S. Fish & Wildlife Service.

On April 17, 2009, Staff filed a Response to Applicant's Motion. According to Staff, the first phase of the Study, which is complete, includes a modeling exercise to identify the contribution of the Carrizo Project along with the two photovoltaic projects on animal movement, dispersal, and migration. The second and third phases of the Study, which

are pending, will identify the attributes of land used by the three projects that constitute habitat for the animals as well as the specific high value parcels of land outside the project sites with similar habitat attributes that could be used for mitigation purposes. Staff expects the CDFG and the U.S. Fish & Wildlife Service to review the results of the Study and comment on appropriate mitigation strategies.

On April 23, 2009, Staff filed a "Clarification" to its Response, emphasizing that Staff takes no position on the merits of Application's Motion but requests the opportunity to brief the issue. On May 1, 2009, Staff filed another Response stating that Staff takes a neutral position on the Motion and that Applicant has the burden of establishing that the public interest will be served by not disclosing the Corridor Location Results.

Intervenors oppose the Motion for a Protective Order. The following parties filed timely Responses in opposition to Applicant's Motion: California Unions for Reliable Energy (CURE), Environmental Center of San Luis Obispo (ECOSLO), John Ruskovich, and Michael Strobridge. In addition, the Santa Lucia Chapter of the Sierra Club filed extensive legal comments in opposition and Robin Bell filed approximately 68 petitions stating local and area opposition to the Motion.

The Intervenors and public commenters emphasize that the public interest will not be served by keeping the identity of valued properties confidential because:

(1) the request is moot since Carrizo and the photovoltaic developers have already approached property owners in the vicinity about purchasing their land and, thus, any asserted "competitive advantage" does not exist;

(2) in order to provide meaningful public participation, the assumptions/modeling criteria used by South Coast Wildlands must be subject to review by all parties before a mitigation plan can be designed;

(3) the publicly funded Wildlife Corridor Study must be publicly available to all parties and all interested members of the public in order to foster "informed decision-making" under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.)

(4) the Corridor Location Results do not qualify for either the "real estate appraisal" exemption under Section 6254(h) of the Public Records Act (Govt. Code, § 6254(h)) or the "catch-all" exemption under Section 6255 of the Public Records Act (Govt. Code, § 6255.); and

(5) the Applicant has not established that non-disclosure of the Corridor Location Results outweighs the public interest in disclosing all relevant information in the public fact-finding process conducted by the Energy Commission.

## **II. Discussion**

We carefully considered all the arguments raised in Applicant's Motion and in the Responses submitted by the other parties and public commenters. We believe the critical point is not whether we *can* issue the requested Protective Order, but rather whether we *should*. (Tit. 20, Cal. Code Regs, § 2501 et seq.) We are persuaded that the public interest is best served by disclosing the Corridor Location Results and potentially subjecting them to adversarial scrutiny during the hearing process. To do otherwise would, as the Intervenor's point out, deprive the public of its opportunity for meaningful participation in our process.

Overall, state law in general and our process in particular mandate that information be disclosed. (Public Records Act, Govt. Code, § 6250 et seq.) It is undisputed that Applicant bears the burden of proving that the public interest is best served by designating the subject material as confidential. (Govt. Code, § 6255(a).) The principal basis Applicant raises to support its request for confidentiality is the potential that land owners will "over inflate the purchase price of [mitigation] corridor land" (Motion, p. 5.), thus rendering procurement prohibitively expensive and making the project economically infeasible. While we strongly support the State's policies favoring renewable energy projects such as Carrizo and are sensitive to the need to contain costs to the extent practicable, we are unpersuaded that Applicant has provided adequate reasons supporting its request.

First, we do not understand how keeping modeling assumptions and results confidential will foster meaningful public participation. It seems axiomatic that, with very few exceptions, the public is entitled to be aware of, and potentially challenge, the analytic underpinnings supporting a biological mitigation plan. If other parties and members of the public are not allowed the opportunity to inspect/and or challenge this analytic basis, not only will the siting process be potentially vulnerable upon review, but CEQA's mandate for "informed decision-making" may be impermissibly hampered. (Pub. Resources Code, § 21092: the lead agency must make available to the public "all documents referenced in the draft environmental impact report" or other CEQA equivalent document upon which the agency will rely for a final decision; see, e.g., *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.)

Next, we are unconvinced that the facts presented justify a deviation from our normal open public process. In this instance, the only harm raised by disclosure of the

information is a potential inflation of land prices, which in turn is based upon a vague assertion that “[i]llegitimate property or easement price increases” (Motion, p. 7) would render the acquisition of preferred mitigation lands more burdensome and uncertain. We are sensitive to the need for cost control in the development of renewable resources. However, various Intervenors and public commenters point out that the locations of much of the potentially suitable mitigation lands are already known, and that property owners have in fact already been contacted concerning their sale. It therefore seems to us that the opportunity for any potential disadvantage to a prospective purchaser – in terms of a higher prices – has already occurred.

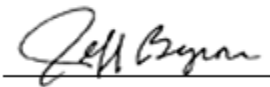
Finally, it seems that the analysis presented in the Wildlife Corridor Study must be developed in an open forum. In this way, the public may fully participate in the development of acceptable performance criteria/modeling assumptions and we can examine whether the subject information is appropriate, adequate, and based on substantial evidence. After these criteria/modeling assumptions have been subjected to public scrutiny, it would then follow that suitable mitigation based on these criteria could be identified and ultimately be incorporated in the Conditions of Certification.

Thus, given the facts presented, we conclude that Applicant has not persuasively shown that the public interest would be better served by designating the results of the Corridor Location Results as confidential.

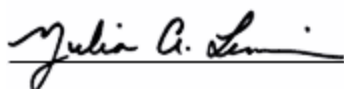
### III. ORDER

The Applicant’s Motion for a Protective Order is hereby **DENIED**.

Dated: May 8, 2009, at Sacramento, California.



JEFFREY D. BYRON  
Commissioner and Presiding Member  
Carrizo AFC Committee



JULIA LEVIN  
Commissioner and Associate Member  
Carrizo AFC Committee